

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Stephen Gyor AICP, Case Manager
 Joel Lawson, Associate Director Development Review
DATE: November 12, 2013

SUBJECT: BZA Case 18659, Request for variance relief to allow the construction of a front room for a single-family dwelling located at 4540 Lowell Street, N.W.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **denial** of the following variances:

- § 405.9 Side Yard (8 feet required, 3.7 feet proposed);
- § 1543.4 Wesley Heights Overlay (13 feet required, 2 feet 4 inches proposed).

Although the application indicates that the Applicant is requesting special exception relief for a nonconforming side yard, the Zoning Administrator indicated to OP that because the entire preexisting single-family structure was demolished, the project is considered “new construction”, and is not eligible for relief as an addition under § 223. Therefore, OP is evaluating the Application based on the Zoning Administrator’s determination that a variance for side yard relief is required.

II. LOCATION AND SITE DESCRIPTION

Address	4540 Lowell Street NW
Legal Description	Square 1608, Lot 68
Ward	3
Lot Characteristics	The property is a rectangular lot with an area of 7,500 square feet (50 feet x 150 feet), which fronts on Lowell Street, NW.
Zoning	Wesley Heights Overlay/R-1-B Permits matter-of-right development of single-family residential uses
Existing Development	Single family dwelling (substantially completed), permitted in this zone. The Subject Property includes a 562 square foot carriage house.
Historic District	NA
Adjacent Properties	Adjacent properties include single-family dwellings.
Surrounding Neighborhood Character	The surrounding neighborhood is predominantly comprised of single family dwellings.

III. APPLICATION IN BRIEF

The Applicant has constructed a front room (the “Project”) attached to a substantially completed single-family dwelling. The area of the requested relief consists of a 10.4 ft. x 11.1 ft. front room located at the northwest corner of the house. The front room was constructed on the foundation of a covered porch which was constructed at the same time as the rest of the former structure prior to 1958 (a 7’ x 4.7’ portion of the pre-existing nonconforming structure was not included in the Project).

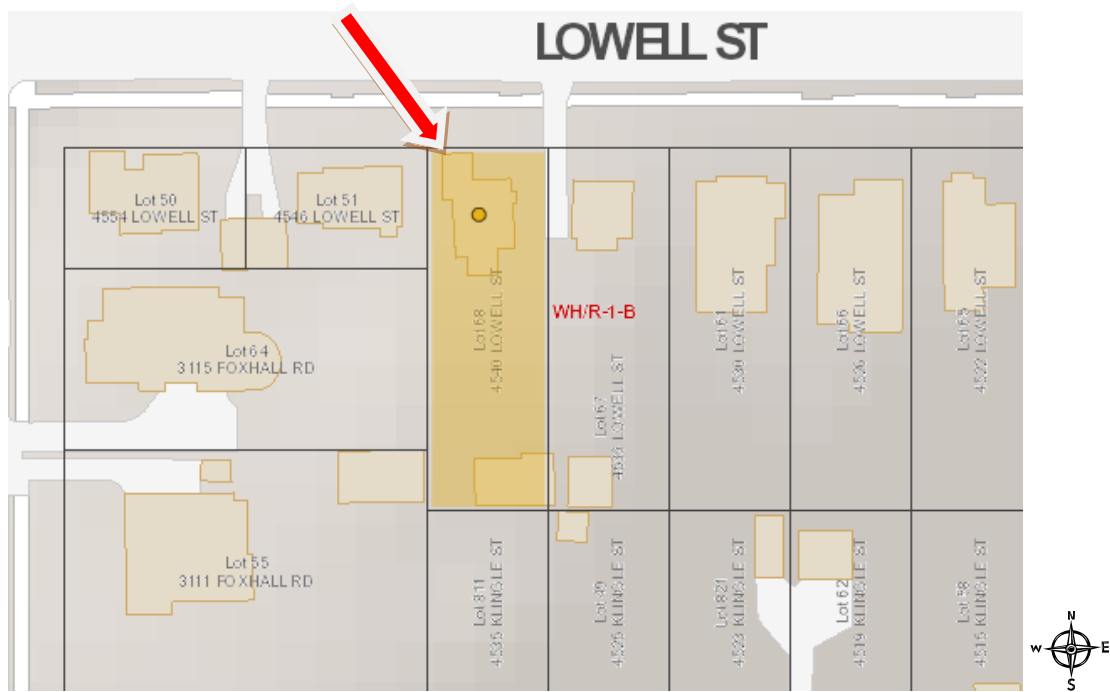
Construction of the house and front room, largely completed, has been stopped by the Department of Consumer and Regulatory Affairs (“DCRA”) through a “Stop Work Order” (issued on June 26, 2013) and Notice to Stop Building Permits (issued on July 3, 2013), after DCRA determined that construction exceeded the scope of the approved building permits. DCRA determined that because the Applicant removed all of the structure’s walls above 4 feet in height, work on the structure constituted new construction following a “demolition”. The Applicant did not obtain a razing permit, which is required to secure the right to remove a building or structure down to the ground. Subsequently, DCRA permitted the Applicant to complete work on the house and to weatherize the front room, with the understanding that the front room could be removed pending the Board of Zoning Adjustment’s (“BZA”) determination in this case.

Since work on the house has been classified as a demolition, the Project would not be eligible for special exception relief as an addition under § 223. Since this section can only be used for additions to existing structures, the Project would be subject to the eight foot side yard requirement under § 405.9. The Applicant disagrees with DCRA’s determination that removing the walls of the previous single-family structure constituted a demolition, but is not contesting the necessity of variance relief in this case. In addition, the Project also requires variance relief from the Wesley Heights Overlay front yard setback requirements of § 1543.4.

An action (2013-DCRA-00065) against the Applicant is currently pending in the Office of Administrative Hearings (“OAH”) pending the BZA determination in this case.

IV. ZONING REQUIREMENTS and REQUESTED RELIEF

WH/R-1-B Zone	Regulation	Existing	Proposed	Relief
Height § 400	40 ft. max.	NA	30 ft.	None required
Lot Width § 401	50 ft. min.	50 ft.	50 ft.	None required
Lot Area § 401	5000 sf. min.	7,500 sf.	7,500 sf.	None required
Floor Area Ratio § 402	None prescribed	NA	NA	None required
Lot Occupancy § 403	30% max.	NA	28.8%	None required
Rear Yard § 404	25 ft. min.	NA	88 ft.	None required
Side Yard § 405	8 ft.	NA	3.7 ft./8 ft.	Relief required
Court § 406	NA	NA	NA	None required
Wesley Heights Overlay § 1543.4	13 ft.	NA	2 ft. 4 in.	Relief required



Subject Property



Subject Property

V. OFFICE OF PLANNING ANALYSIS

a. Variance Relief from § 405 (Side Yard), 1543.4 (Wesley Heights Overlay)

i. Exceptional Situation Resulting in a Practical Difficulty

OP does not find a specific uniqueness that imposes a practical difficulty which is unnecessarily burdensome to the Applicant. A practical difficulty related to the Subject Property's shape, size, or topographical characteristics has not been established; the Subject Property is rectangular in shape, 7,500 sf. in total area, and has no significant grade changes.

The Applicant contends that the previous covered porch was a nonconforming aspect of the prior house, and that closing in a legally nonconforming covered porch is permitted as a matter of right; however, the covered porch lost legally nonconforming status when the House was torn down.

The Applicant further contends that DCRA's approval of building permits for the Front Room and subsequent issuing of a Stop Work Order and Notice to Stop Building Permits constitutes a practical difficulty. The Applicant states that DCRA conducted multiple inspections of the Subject Property prior to the Stop Work Order and Notice to Stop Building Permits, and passed inspection on each occasion. The Applicant contends that DCRA's decision to later characterize the work on the House as a "demolition" was a result of the Applicant exceeding the permitted amount of demolition when the Applicant discovered that a portion of a wall which was to be saved was not viable.

DCRA's determination that construction on the House exceeded the scope of the building permits does not constitute a practical difficulty for the Applicant. The timing of DCRA's determination is also irrelevant. The Applicant failed to seek an additional permit when removing the remainder of the preexisting structure's walls above four feet in height. OP's analysis reflects DCRA's determination that the Project is classified as "new construction"; as such, the Applicant has not demonstrated the necessity of locating the Project in the present location in lieu of a more conforming solution.

§ 405 (Side Yard)

The Applicant is seeking relief from § 405, which requires a minimum side yard of width of 8 ft. The Project provides a side yard of 3.7 feet on the west side of the Subject Property. The Project essentially replicates the Subject Property's previous side yard prior to demolition; however, the Applicant has not provided a basis for the side yard relief for the new construction based on an exceptional situation resulting in a practical difficulty.

1543.4 (Wesley Heights Overlay)

The WH Overlay District, which was adopted in 1992, introduced certain restrictions related to maximum lot occupancy, maximum floor area ratio, and minimum front yard setback. The front yard setback (§ 1543.4) requirement provides that “all residential buildings shall have a front yard setback equal to or greater than the average setback of all structures on the same side of the street in the block where the building in question is located.” The provision references a map that presents the applicable setbacks. For the block containing the Subject Property, the map identifies a 13’ minimum front yard setback requirement. Zoning Commission Order No. 718, Case No. 90-5 (1992).

While the Project is a relatively modest structure, it would nevertheless have some impact on the character of the neighborhood and the goals of the WH Overlay. The proposal would disrupt the pattern of setbacks on the block, which the WH Overlay is designed to protect.

ii. No Substantial Detriment to the Public Good

The proposed front room would be smaller in size than the preexisting structure, decreasing the extent of the nonconformity. However, the neighbor at 4546 Lowell Street opposes the Project based on its impact to their light and air, as well as enjoyment and use of their property. It appears that the Project’s impact to 4546 Lowell Street’s light and air would be most substantial during the morning hours. The neighbor indicated that the existing side yard wall, partially located on the neighbor’s property, prevents the installation of landscaping to screen the Project.

iii. No Substantial Harm to the Zoning Regulations

Granting the requested zoning relief would be contrary to the intent of the Zoning Regulations. While the Project replaces a larger structure with a more conforming one, the Project’s proposed side yard and front yard setback would nevertheless contravene the District’s zone plan and the Wesley Heights Overlay.

VI. COMMUNITY COMMENTS

Thirteen neighbors in the vicinity of the proposed addition have filed letters in support of the applicant. The neighbor residing at 4546 Lowell Street has filed a Request for Party Status and opposes the Applicant’s request for relief in this case.

ANC 3D voted 10-0 to recommend denial of the application at their meeting held on November 6, 2013.

VII. CONCLUSION

The application has not adequately established a practical difficulty associated with an existing property condition or characteristic, the first standard for variance

approval. There is no nexus between any uniqueness of the property and a practical difficulty for the applicant. Therefore, the requested variances cannot be justified “without impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map” (§ 3103.2).

In addition, the applicant’s proposal would be detrimental to the intent of the zoning regulations.